

ELMER G. THOMAS, ET AL.

IBLA 82-439

Decided July 30, 1982

Appeal from decision of Wyoming State Office, Bureau of Land Management, declaring mining claims null and void ab initio in whole or in part. W MC 67309, et al.

Affirmed.

1. Mining Claims: Withdrawn Land--Withdrawals and Reservations:  
Reclamation Withdrawals

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first form reclamation withdrawal is null and void ab initio.

APPEARANCES: George L. Simonton, Esq., Cody, Wyoming, pro se, and for the other appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Elmer G. Thomas and others have appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 5, 1982, declaring the Wildcat Mine Claim #1 through #3 and the Grizzly Mine Claim #2, W MC 67314 through W MC 67316 and W MC 67320, and portions of the Big Buck Mine Claim #3 through #6, and the Wildcat Mine Claim #4 and #5, W MC 67309 through W MC 67312, W MC 67317 and W MC 67318, null and void ab initio. 1/ The claims are situated in secs. 11, 14, 23, and 26, T. 53 N., R. 102 W., sixth principal meridian, Park County, Wyoming.

Appellants' mining claims were located on November 30 or December 7, 1978. BLM held the claims null and void ab initio to the extent they included land withdrawn from public entry pursuant to Secretarial orders of April 20, 1928, and April 2, 1929, first form reclamation withdrawals for the Shoshone Reclamation Project. 2/

---

1/ Each of the 10 mining claims was located as an association placer by eight co-locators. The appellants are: Elmer G. Thomas, Mark Thomas, Raymond Salverson, Ellen Arnold, Lynn H. Grooms, Sylvia I. Grooms, Donald A. Rick, Sr., George L. Simonton, Stephen L. Simonton, Lulu Schuler, Montana Mae Capron, and Joseph F. Capron.

2/ In its decision BLM described the portion of each of the six claims that was located partially on withdrawn lands.

In their statement of reasons for appeal, appellants contend that the Secretarial orders did not effectively withdraw certain parts of the land because that land had been mined "prior" to the reclamation withdrawals. Appellants also argue that allowing mining would produce a valuable resource, bentonite, and would not adversely affect the land. Finally, appellants contend that the public was not properly notified of the withdrawals because the "Secretarial orders" were not filed in Park County, Wyoming.

[1] The documents referred to by BLM were dated April 20, 1928, and April 2, 1929, and signed by the First Assistant Secretary of the Interior. Those documents effectively withdrew the land from all forms of appropriation under the public land laws, including the mining laws. It is well settled that a mining claim located on land withdrawn from mineral entry by a first form reclamation withdrawal order is properly declared null and void ab initio. Susan E. Mitchell, 53 IBLA 42 (1981), and cases cited therein. Moreover, there is no evidence that the land has been restored to mineral entry, pursuant to the Act of April 23, 1932, 43 U.S.C. § 154 (1976).

Appellants' mining claims were located at a time when the land was withdrawn from mineral entry. Appellants have not alleged that they have an interest in mining claims which predate the reclamation withdrawals. See Lairy D. Brookshire, 56 IBLA 73 (1981). The mere fact that the land may have been mined prior to the reclamation withdrawals does not inure to the benefit of appellants whose claims were located in 1978.

In addition, there is no requirement that reclamation withdrawals be filed with the local county recording office in order to be effective. Each of the documents in question stated that "the Commissioner of the General Land Office will cause the records of his office and of the local land office to be noted accordingly." The withdrawals presently appear on BLM's master title plats.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

